

**JOHN DEERE****Fax Cover Sheet**

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Date: 26 February 2009  
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**Re:** 10/736465 (Non-Compliant Brief) **CC:**

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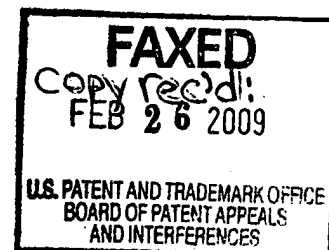
Mr. Horton,

In response to your fax of 25 February 2009 regarding the need to correct the **Summary of Claimed Subject Matter** of the appeal brief for US 10/736465 I am submitting herewith corrected pages 2-3.

Please let me know if you require anything further.

Regards,

W. Michael Dixon



Claims 1, 7 and 8 stand rejected.

Claims 2-6, 9 and 10 stand objected to.

This appeal is from the rejection of claims 1, 7 and 8. A copy of the claims as amended is set forth in the attached Appendix.

### **Status of Amendments**

A first amendment, filed 10 August 2004, and containing an amendment to claim 1, was entered in its entirety and considered in the Final Rejection, dated 02 November 2004.

### **Summary of Claimed Subject Matter**

The claimed subject matter, as set forth in independent claim 1, relates to a combination of a mowing implement (10 in Figs. 1-3, described first at Paragraph 16, page 3, lines 6-17) equipped with a rotary disc cutter bar (40 in Figs. 1-3, described first at Paragraph 17, page 3, lines 18-31) having a gear housing (46 in Figs. 1-3, described first at Paragraph 17, page 3, lines 18-31) extending transversely, relative to a forward direction of travel during mowing operation, and including a plurality of transversely spaced, knife-carrying rotary discs (64 in Figs. 1-3, described first at Paragraph 21, page 4 lines 19-22) mounted, and being respectively driven, for rotating in desired directions above an upper surface of said gear housing for cutting and delivering crop into a discharge zone at the rear of the cutter bar (Paragraph 21, page 4 lines 19-22), a crop processing device (25 in Figs. 1-3, described first at Paragraph 22, page 4 lines 23-31) located in said discharge zone just downstream from said cutter bar, and a crop-lifting arrangement (92 in Figs. 1-3, described first at Paragraph 25, page 5, lines 16-24) for directing cut crop delivered by said rotary discs upwardly and rearwardly from said cutter bar so as to be in a favorable location for engagement by said crop processing device (Paragraph 28 page 6, lines 23-31 and page 7 lines 1-7), the improvement comprising: said crop-lifting arrangement including a lip (100 in Figs. 4 and 5, described first at Paragraph 27, page 5 line 31 and page 6 lines 1-22) extending transversely across, and projecting substantially upright from, at least a rear region of said cutter bar located just forward of said crop processing device (paragraph 28, page 6, lines 23-31 and page 7 lines 1-7); and said lip extending closely adjacent to, and to a height above, a path traced by knives

of said knife-carrying rotary discs (Paragraph 27, page 5 line 31 and page 6 lines 1-22 and paragraph 28, page 6, lines 23-31 and page 7 lines 1-7).

The claimed subject matter further to the combination, described above and wherein said lip is inclined upwardly and forwardly at an angle of approximately 60° to the horizontal (Figs. 3-5).

### **Grounds of Rejection to be Reviewed on Appeal**

Claims 1, 7 and 8 are unpatentable, based on 35 U.S.C. 102(b) as being anticipated by Scarnato et al. (U.S. Patent No. 3,673,779)

### **Argument**

Claims 1, 7 and 8 stand rejected, based on 35 U.S.C. 102(b), as being anticipated by Scarnato et al. It is respectfully submitted that Scarnato et al. do not disclose the lip structure set forth in claim 1.

Specifically, among other structure, claim 1 requires a crop-lifting arrangement including a lip extending transversely across and projecting **substantially upright** from, at least a rear region of the cutter bar, located **just forward** of the crop processing device, and for the lip to extend **closely adjacent to** and to a height **above** a path traced by knives of the knife-carrying rotary discs.

Scarnato et al. disclose (FIG. 4) a cutter bar including box beam structure 160 forming a gear housing and including top and bottom walls 161 and 162, and front and rear walls 163 and 164. Forming a rearward extension of the bottom wall 162 is a guide wall 170 which leads to the nip 125 established between upper and lower conditioner rolls 11 and 8, respectively.

It is clear that the guide wall 170 **does not extend upright** from the box beam structure 160, and in fact is almost coplanar with the bottom wall 162. While the Examiner contends that the guide wall 170 is just as upright as is the lip section 100 in FIG. 5, a simple measurement will show that the guide wall 170 makes an angle of approximately 20° with the horizontal while the lip 100 makes an angle of about 64° with the horizontal, a considerable difference. Further, It is clear that the guide wall 170 **does not extend closely adjacent** a path traced by knives of the knife-carrying